

Notice of Allowability

Application No.

09/536,663

Examiner

Daniel L. Greene

Applicant(s)

GASTINEAU ET AL.

Art Unit

3621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 7/20/2004.
2. ☒ The allowed claim(s) is/are 1-26.
3. ☒ The drawings filed on 27 March 2004 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 3/23/2004
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Michel J. Bell on 11/18/2004.

The application has been amended as follows:

-2- 1 (presently amended) A method using a computer readable medium for allowing the trading of shares of actively managed exchange traded funds comprising the steps of determining an intra-day net asset value proxy for the actively managed exchange traded fund [comprising] by:

electronically receiving a file having adjusted portfolio security position information in the actively managed exchange traded fund in an encrypted format;

decrypting the file having the adjusted portfolio information to provide the security positions in the actively managed exchange traded fund portfolio;

checking the file having the adjusted portfolio information by:

electronically calculating a value of the portfolio based on the closing prices of the securities in the adjusted portfolio as of the previous trading day, and comparing the calculated value of the portfolio based on the closing prices of the securities in the portfolio as of the previous trading day and known adjustments with a published net asset value of the portfolio as of the close of the previous trading day; and

Art Unit: 3621

electronically calculating the intra-day net asset value proxy for the actively managed exchange traded fund by applying prices received from a quote feed to the security positions in the actively managed exchange traded fund portfolio,

wherein the security positions of the actively managed exchange traded fund are kept confidential.

13. (Presently amended). A computer program product for determining an intra-day net asset value proxy for an actively managed exchange traded fund-comprising instructions for causing a computer to:

electronically receive a file having adjusted portfolio security position information in the actively managed exchange traded fund in an encrypted format;

decrypt the file having the adjusted portfolio information to provide a table having the actively managed exchange traded fund security positions;

check the file having the adjusted portfolio information by

electronically calculating a value of the portfolio based on the closing prices of the securities in the portfolio as of the previous trading day, and

electronically comparing the calculated value of the portfolio based on the closing prices of the securities in the portfolio as of the previous trading day with a published net asset value of the portfolio as of the close of the previous trading day;

electronically calculate the intra-day net asset value proxy for the actively managed exchange traded *fund* by applying prices received from a quote feed to the

Art Unit: 3621

security positions in the table, wherein the security positions of the actively managed exchange traded fund are kept confidential.

20 (Presently amended). A system for determining an intra-day net asset value proxy for an actively managed exchange traded fund, comprising:

a trusted computer system comprising physical hardware and an operating system configuration in which domain configuration and trust relationships are established to control access to information in the trusted system; and

a computer readable media storing a computer program product for determining the intraday net asset value proxy for the actively managed exchange traded fund, said program comprising instructions for causing the trusted system to:

decrypt a file having adjusted portfolio security position information in the actively managed exchange traded fund to provide the security positions in the actively managed exchange traded fund;

electronically check the file having the adjusted portfolio information by electronically calculating a value of the portfolio based on the closing prices of the securities in the portfolio as of the previous trading day, and

electronically comparing the calculated value of the portfolio based on the closing prices of the securities in the portfolio as of the previous trading day with a published net asset value of the portfolio as of the close of the previous trading day;

Art Unit: 3621

electronically calculate the intra-day net asset value proxy for the actively managed exchange traded fund by applying prices received from a quote feed to security positions in the actively managed exchange traded fund portfolio, wherein the security positions of the actively managed exchange traded fund are kept confidential.

23 (Presently amended) A method of determining an intra-day net asset value proxy for an actively managed exchange traded fund comprising:

electronically receiving a file having adjusted portfolio security position information in the actively managed exchange traded fund in an encrypted format;

electronically decrypting the file having the adjusted portfolio information to provide the security positions in the actively managed exchange traded fund portfolio;

locking the file having the adjusted portfolio information by re-encrypting the adjusted portfolio information;

electronically sending the encrypted adjusted portfolio information to a portfolio management organization;

re-decrypting the re-encrypted adjusted portfolio information, and comparing the re-decrypting adjusted portfolio information with the adjusted portfolio security position information; and

electronically calculating the intra-day net asset value proxy for the fund by applying prices received from a quote feed to the security positions in the actively managed exchange traded fund portfolio,

wherein the security positions of the actively managed exchange traded fund are kept confidential.

Response to Amendment

The Amendment filed 7/20/2004 is sufficient to overcome the rejection of claims based upon Kane, Newton, and Wolfberg.

Allowable Subject Matter

1. The following is an examiner's statement of reasons for allowance:

As per claims 1, 13, 20, and 23 the closest prior art of record Kane, U.S. Patent 6,317,728 in view of Newton's Telecom Dictionary taken either individually or in combination with other prior art of record fails to teach or suggest the step of checking the decrypted actively managed exchange traded funds (AMETF) portfolio by comparing valuation using the decrypted portfolio against the published actively managed exchange traded fund net asset value (NAV) which ties the claimed methods/computer program/system to the specific encrypted AMETF portfolio data.

The specific allowable feature, which distinguishes the present invention over the prior art, is the methods to allow the trading of actively managed exchange-traded funds. Currently, actively managed funds are not traded on exchanges. Funds that are traded on exchanges are not currently actively managed, but rather are designed to track an index (e.g., the S&P 500 Index) by investing substantially all fund assets in the same securities that underlie the index. Traders know the fair value of these index funds

Art Unit: 3621

("exchange traded funds" or ETFs) because they know what securities the funds are invested in. Current actively managed funds, on the other hand, are not exchanged traded in part because their assets are kept secret and so their intra-day fair value are unknown to the traders.

Currently, actively managed funds publish a NAV for the fund at the close of each trading day based on that day's closing prices of the securities held by the fund at the close of the previous closing trading day. In the claimed invention, a net asset value of the AMETF is also published, and this published value is compared against a value calculated using the decrypted AMETF portfolio as a check of the accuracy of the decrypted portfolio. The prior art cited does not teach or suggest applying encryption technologies to solve the problem of how to provide an intra-day valuation of an actively managed exchange traded fund, or involves the step of checking a decrypted AMETF portfolio.

Claims 2-12, 24, 14-19, 22, 25, 21, and 26 are dependent upon Claims 1, 13, and 20 and thus has all the limitations of claims 1, 13, and 20 and are allowable for that reason.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Art Unit: 3621

Conclusion

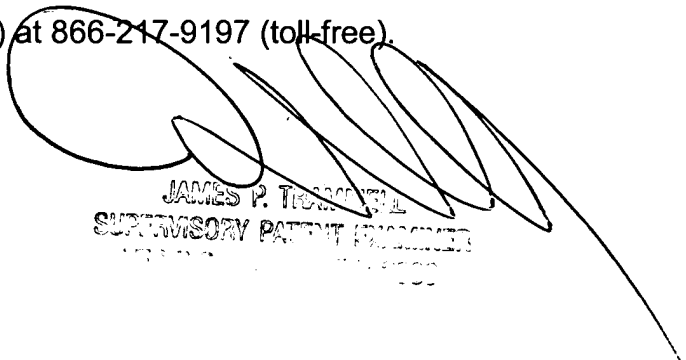
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel L. Greene whose telephone number is 703-306-5539. The examiner can normally be reached on M-Thur. 8am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammell can be reached on 703-305-9768. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

11/18/2004

DLG



JAMES P. TRAMMELL
SUPERVISORY PATENT EXAMINER